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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re:) Chapter 11
)
Benyam Mulugeta and) Case No. 09-51900 ASW
Paula R. Mulugeta,)
) Date: February 8, 2013
Debtors) Time: 2:15 p.m.
) Place: Courtroom 3020
) Judge: Hon. Arthur S.
) Weissbrodt
)
	/

**DEBTORS' MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF
DISMISSAL**

INTRODUCTION

On December 14, 2012, in connection with a motion to dismiss or convert, the Court ordered this case dismissed effective February 25, 2013 (see Docket No. 727), but invited the debtors to request that the Court reconsider the order of dismissal, provided debtors were able to articulate a feasible plan.

1 Debtor Benyam Mulugeta (Benyam) has been a licensed real
2 estate broker since 1985. Since that time he has bought, sold,
3 and managed more than 30 properties, both commercial and
4 residential. Debtor Paula Mulugeta has been employed as a wage
5 earner.

6 During the real estate bubble, debtors purchased several
7 commercial and residential properties. Debtors borrowed against
8 some of the properties in order to develop the commercial
9 properties into what was perceived to be their highest and best
10 use. However, before the development could be completed, the
11 real estate market collapsed. Debtors defaulted on the various
12 mortgage loans, and on March 18, 2009, filed this Chapter 11
13 case.

14 GOALS

15 Debtors first goal is to save their home, the single family
16 residence located at 1025 Harker Avenue, Palo Alto, California
17 ("Harker").
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19 Debtors second goal is to quickly pay off the real property
20 tax debt, secured by the commercial real property located at 353
21 Grand Avenue, Oakland, California ("Grand"). This tax debt,
22 totaling approximately \$319,000 consists of an administrative
23 claim in the amount of approximately \$252,000 and a secured
24 claim in the amount of approximately \$67,000.

25 OUTLINES OF A PLAN

1 Regarding Grand, debtors propose to immediately list it for
2 sale. They contemplate a pre-confirmation sale free and clear
3 of liens pursuant to Section 1129(b)(2)(ii). Debtors believe
4 the value of Grand to be approximately 2.8 million. In addition
5 to the property tax lien, it is subject to a first mortgage owed
6 to Sterling Savings Bank, in the amount of approximately 2
7 million, and three other junior lienholders owed in excess of 1
8 million.

9 Debtors own another commercial real property located at
10 2332 Harrison, Oakland, California ("Harrison"). The Court had
11 granted the lienholder, Lone Oak Fund, LLC, relief from stay to
12 conduct a trustee's sale; however, apparently this has not yet
13 occurred. Therefore, in order to mitigate the accrual of
14 administrative real property tax claims, unless sooner sold at a
15 trustee's sale, debtors propose to immediately list Harrison for
16 sale or to notice an abandonment of it.

17
18 Harker is worth 2.5 million, and subject to a first
19 mortgage in the amount of 1,745,482 owed to Chase, and second,
20 third and fourth mortgages in the combined amount of 1.4 million
21 owed to or serviced by Sequoia Mortgage.

22 Harker consists of a primary residence that is being rented
23 for the amount of \$9,300 per month, and a "mother-in-law" unit
24 in which debtors reside. As a consequence of this dual use,
25 Harker is not subject to the anti-modification strictures of

1 Section 1123(b)(5) (see, e.g. In re Ramirez, 62 B.R. 668 (Bankr.
2 S.D. Cal. 1986)).

3 Regarding Chase, debtors have been maintaining payments,
4 and there is a small post-petition arrearage; however, debtors
5 have applied for and believe they will receive a loan
6 modification. As to Sequoia Mortgage, debtors would hope to
7 reach agreement regarding valuation and treatment. The Sequoia
8 Mortgages are all due and payable, so debtors intend to propose
9 payments from the excess rentals received, approximately \$2,500
10 per month, and extend the maturity of these mortgages for five
11 years. Debtors believe that the Palo Alto real estate market
12 has been and will continue to experience significant
13 appreciation, so that after five years Harker should be worth in
14 excess of 3 million, and debtors will be able to refinance or
15 sell it.

16 Debtors own a residential duplex located at 1112-1114
17 Chaucer Street, Berkeley, California ("Chaucer"). Debtors have
18 applied for and believe they will be granted a loan modification
19 by Chase, the lender. Chaucer has renters and is generating a
20 positive cash flow. Even in the absence of a loan modification,
21 debtors would be able to maintain payments and cure the
22 arrearage of approximately \$34,000 over three years.

23 Chaucer is encumbered by a junior mortgage in the amount of
24 approximately 1 million owed to California Mortgage. The latter
25

1 is partially unsecured, so would need to be valued. Debtors
2 would hope to negotiate new terms with California Mortgage; but
3 failing that, Chaucer would be surrendered.

4 Debtors own a single family residence at 1339 Sevier
5 Avenue, Menlo Park, California ("Sevier"). Debtors have been
6 maintaining regular payments to the first lienholder, Chase.
7 There is only a small arrearage of approximately three months,
8 so debtors can promptly cure this. California Mortgage is in
9 junior position; however, its position appears to be wholly
10 unsecured. As a consequence, debtors would propose to treat it
11 as unsecured; however, if it elected to be treated as fully
12 secured, then, in the absence of an agreement, debtors would
13 surrender this property.

14 Debtors own two other single family residences, one at 5401
15 Brann Street, Oakland, California ("Brann"), and another at 1111
16 Alma Street, Palo Alto, California ("Alma"). Brann has no
17 equity, so would be surrendered. Debtors believe Alma may have
18 some equity, so would be sold.

20 CONCLUSION

21 Debtors believe they have outlined a feasible plan for
22 accomplishing their two main goals of saving their home and
23 dealing with the administrative real property tax debt.
24 Moreover, their proposal for dealing with the other real
25 properties is relatively straightforward and able to be

1 accomplished. Therefore, the Court should reconsider and set
2 aside its order of dismissal.

3 Dated: 1/28/2013 /s/Stanley Zlotoff

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5 VERIFICATION

6 We Benyam and Paula Mulugeta declare under penalty of
7 perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed in Santa Clara County,
9 California on January 28, 2013.

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12 /s/Benyam Mulugeta

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15 /s/Paula Mulugeta
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